

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CIVIL APPLICATION No 8067 of 1998

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Order ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Order ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

UNCHAMALA MAHILA DUDH UTPADAK SAHAKARI MANDLI LTD
VERSUS
DISTRICT REGISTRAR, CO-OPERATIVE SOCIETY

Appearance:

MR SV PARMAR for the Petitioner
MR MUKESH A PATEL for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE
Date of Order: 24/03/99

C.A.V. ORDER

1. Challenge has been made by the petitioner, a proposed Cooperative Society to the order annexure 'G' dated 25-6-1998 of District Registrar, Cooperative

Societies, Surat District, under which the said authority has declined to register the petitioner-Society under the provisions of the Gujarat Cooperative Societies Act, 1961.

2. Learned counsel for the respondent raised a preliminary objection that the order impugned in this special civil application is appealable under sec. 153 of the Act aforesaid and as such, this petition is not maintainable.

3. Replying to this preliminary objection, learned counsel for the petitioner relying on the decision of the Hon'ble Supreme Court in the case of Champalal vs. I.T.Commissioner, W.B. reported in AIR 1970 SC 645 contended that as it is a case where the petitioner is complaining of infringement of its fundamental rights, the alternative remedy is not taken to be in its way to approach this court directly against this order. It has further been contended that the order of the respondent-authority is wholly perverse and as such this court may not relegate the petitioner to the remedy of appeal. The petitioner has also relied on two unreported decisions of this Court in the case of Nani Gavachhi Dudh Utpadan Sahakari Mandli Ltd. vs. District Registrar, Cooperative Societies, special civil application No.6581/98 decided on 15-12-1998 and in the case of Mahila Dudh Utpadak Mandli (Proposed) vs. Surat District Panchayat, special civil application No.2884/97 decided on 30-6-97.

4. I fail to find any substance in this contention of the learned counsel for the petitioner. Learned counsel for the petitioner is not disputing that the order impugned in this special civil application is appealable under section 153 of the Act. Only justification given for bypassing of this statutory remedy is that the infringement of fundamental right has been complained in this special civil application.

5. In para-5 of the special civil application, the petitioner has made a statement, "The petitioner does not have any other alternative remedy". The petitioner has deliberately made this incorrect statement of fact. From sec.153 of the Act, it is clear that against the impugned order passed by the respondent, the petitioner has a statutory right of appeal and despite of the same, this wrong statement of fact has been made. In a case where the petitioner has a statutory right of appeal or revision or some other alternative remedy against the impugned order and where it directly approaches to this

court, it is its duty to candidly and fairly give out what remedy is available and then to give out clearly the reasons and the grounds for bypassing that remedy. This conduct of the petitioner that despite of having the statutory right of appeal against the impugned order to make such a wrong statement of facts is difficult to appreciate. Moreover, in the special civil application the petitioner has not given out any justification or ground to bypass this statutory right of appeal against this order. I fail to see how this matter can be said to be infringement of fundamental right of the petitioner.

6. The proposed Society has to apply to concerned authority for its registration under the Act aforesaid and in case the authority has not registered the Society, a remedial measure has been provided by providing a statutory right of appeal and whatever grievance the proposed Society has against the original order of the authority, it can be raised before the appellate authority. In such matters, where the statutory right of appeal is provided, the litigant should have been relegated first to that remedy and in case ultimately decision is given against it, certainly if that is the final decision it may come before this court but not by circumventing that remedy. In a matter where the statutory right of appeal or revision is available, this Court should insist to the litigant to first avail of that remedy. The practice of litigants to approach directly by bypassing of the remedy available against the impugned order under Article 226 or 227 of the Constitution deserves to be deprecated. The decision on which reliance has been placed is hardly of any help to the petitioner in this case.

Similarly, the two decisions of this Court on which reliance has been placed by the learned counsel for the petitioner is hardly of any assistance to the petitioner. Those matters have been decided on the basis of their own facts. Moreover, in those matters, the objection has not been raised that against the impugned orders therein, the petitioners in those petitions have a statutory right of appeal.

7. In the result, the preliminary objection raised by the learned counsel for the respondent deserves to be accepted and accordingly this special civil application is dismissed only on the ground that against the impugned order the petitioner has a statutory right of appeal.

zgs/-